

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

D'Andre J. Fairgood,

Plaintiffs,

Case No. 18-12107

v.

Judith E. Levy

United States District Judge

Kipp Wethy (*MDOC Officer*),

Mag. Judge David R. Grand

Defendant.

_____/

**ORDER ADJOURNING FINAL PRETRIAL CONFERENCE AND
SETTING DEADLINE FOR SUBMISSION OF JOINT FINAL
PRETRIAL ORDER [42]**

On July 14, 2021, Defendant Kipp Wethy filed a notice of failure to complete the Joint Final Pretrial Order (ECF No. 43) pursuant to the Amended Scheduling Order governing this case. (ECF No. 42.) Defendant outlined the history of his numerous attempts to communicate with Plaintiff D'Andre Fairgood about the need to jointly complete the Joint Final Pretrial Order. (ECF No. 43, PageID.168–170.) According to Defendant, despite multiple e-mails requesting Plaintiff's participation in convening a conference to discuss the formation of the Joint Final

Pretrial Order, as well as e-mails requesting Plaintiff to provide his version of the Joint Final Pretrial Order, Plaintiff failed to cooperate in setting up a conference between the parties or in providing his version of the Joint Final Pretrial Order. (*Id.*) As a result of Plaintiff's lack of compliance with Eastern District of Michigan Local Rule 16.2(a) and the Amended Scheduling Order, Defendant requests the Court dismiss Plaintiff's complaint pursuant to Federal Rule of Civil Procedure 41(b) as well as Local Rule 16.2(c). (*Id.* at PageID.171.)

The Amended Scheduling Order (ECF No. 42) governing this case required submission of a Joint Final Pretrial Order before the Final Pretrial Conference. *See* E.D. Mich. L.R. 16.2(a) ("The parties shall furnish a joint final pretrial order in every civil case at, or if the judge requires, before the final pretrial conference."). Under Local Rule 16.2(c), "[f]or failure to cooperate in preparing or submitting the joint final pretrial order or failure to comply strictly with the terms of the joint final pretrial order, the Court may dismiss claims, enter default judgment, refuse to permit witnesses to testify or to admit exhibits, assess costs and expenses, including attorney fees, or impose other appropriate sanctions." E.D. Mich. L.R. 16.2(c).

The Court will permit the parties additional time in which to cooperatively prepare and submit the Joint Final Pretrial Order. The parties are to submit a Joint Final Pretrial Order by **August 6, 2021**. The Court does not anticipate any additional extensions of this date.

For the reasons set forth above, the Court **ADJOURNS** the deadlines for submission of the Joint Final Pretrial Order (previously set for July 14, 2021) and the Final Pretrial Conference (previously set for July 21, 2021) reflected in the Amended Scheduling Order. (ECF No. 42.) The Final Pretrial Conference is reset to **October 12, 2021 at 1:30 p.m.** The Jury Trial Date is reset to **October 25, 2021 at 8:30 a.m.**

In the event that Plaintiff does not participate in the formation of the Joint Final Pretrial Order, such that the parties are unable to cooperatively complete and submit the Joint Final Pretrial Order by August 6, 2021, the Court will assume that Plaintiff is no longer pursuing this case and will dismiss Plaintiff's complaint pursuant to Eastern District of Michigan Local Rule 16.2(c).

IT IS SO ORDERED.

Dated: July 16, 2021
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on July 16, 2021.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager